

MEMO ENDORSED

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Southern District of New York
Jennifer L. Brown
Attorney-in-Charge

March 13, 2013

By Fax

The Honorable P. Kevin Castel
 United States District Judge
 Southern District of New York
 500 Pearl Street
 New York, NY 10007

Re: United States v. Ahmed
 10 Cr. 131 (PKC)

Hon. Judge Castel:

I will hear the parties at the scheduled time of March 19 at 2pm
 SO ORDERED
JL Brown
 USDS
 3-14-13

I write to request an adjournment of Mr. Ahmed's sentencing, scheduled for March 19, 2013. For the reasons below, I request sentencing be adjourned to two weeks after the government completes the limited discovery sought here.

The government's sentencing submission of yesterday contains factual assertions based on 302s never produced to the defense. If the government continues using this material in connection to Mr. Ahmed's sentencing, Mr. Ahmed is entitled to address their position, but only after he receives and reviews the 302s the government has used to try to advance its arguments at sentence.

It is fundamentally unfair to Mr. Ahmed to allow the government to use discovery to forward their sentencing arguments to the Court, while refusing Mr. Ahmed an opportunity to review and rebut any inaccuracies proffered by the government, and otherwise present his explanation of the facts to the Court.

Here is the bottom line: the law does not allow one party to use discovery, while precluding the other party from its use. Either the government should produce discovery so the defense has the same access to it, or the Court should preclude the government from using it. See, e.g., United States v. Zdorovenin, 07 Cr. 440 (PGG) (Judge Gardephe ordering the government to produce the discovery).

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We have tried to resolve this matter with the government. In response, the government has informed us that they not only reject our request for an adjournment to reply to their 17 page single-spaced sentencing submission, but they also reject our request for limited discovery of 302s or removal/redaction of the improper portions of their sentencing submission.

We respectfully ask the court to grant us appropriate relief. Fairness dictates that a defendant facing sentence have access to the 302s the government is using against him, and the opportunity to review and rebut, be it by a reply submission or a Fatico hearing. To allow the government's one-sided use of the 302s, without giving the defendant the same opportunity, is unfairly prejudicial to the defendant.

The Court should order the government to produce the documents they rely on in their sentencing submission, or amend their sentencing submission, or grant Mr. Ahmed a Fatico hearing on the issues raised by the government's unilateral use of the 302s. As part of this, the Court should set a new date for sentence.

Thank you for your time and consideration.

Respectfully submitted,



Sabrina Shroff
Assistant Federal Defender

cc: AUSA Naftalis, Cronan, Kovner